83-1761

Office - Supreme Court, U.S.
FILED
APR 30 1984
ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. _____

CHARLES M. CORWIN, ET AL

Petitioners,

v.

JOHN F. LEHMAN, JR.,
SECRETARY OF THE NAVY, ET AL

Respondents.

PETITION FOR WRIT OF CERTIORARI
To The United States Court of Appeals
For The Federal Circuit

Penrose Lucas Albright
2306 South Eads Street
Arlington, VA 22202
(703) 979-3242
Attorney for Petitioners

Mason, Mason & Albright
Of Counsel

QUESTIONS PRESENTED

1. Military personnel are not under the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. §621 et seq.) (ADEA) or Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§2000e-17). They are, however, included with civilian employees and others in a DoD directive which implements such statutes prohibiting discrimination against civilian employees. The question presented is: Whether or not provisions of such DoD directive which prohibit "arbitrary discrimination based on race, color, religion, sex, age or national origin" for all have been properly construed by the Court of Appeals for the Federal Circuit for military personnel when it failed to apply the analytical formula prescribed by this Court and followed

in practically all other Circuits to determine the existence of discrimination against civilians.

2. The last sentence of 10 U.S.C. §280 is: "So far as practicable, regulations for all reserve components shall be uniform." The Navy's maximum age-in-grade regulations do not (it was alleged) meet this test and no evidence was adduced to the contrary. The question presented is: Did the Court of Appeals for the Federal Circuit properly find there is no point in ascertaining if this requirement has been met because uniformity of such regulations is inherently impracticable among the various reserve components?

PARTIES

A complete list of all parties is:

Plaintiffs

Charles M. Corwin

Lawrence Cotman

Henry M. Shine, Jr.

Edward H. Torgersen

Charles E. Oliver

Defendants

John F. Lehman, Jr., as Secretary of the Navy

Lando W. Zech, Jr., as Chief of Naval Personnel

The United States

TABLE OF CONTENTS

QUESTIONS PRESENTED 1

PARTIES 2

TABLE OF CONTENTS 3

TABLE OF AUTHORITIES 4

OPINIONS BELOW 6

JURISDICTION 7

STATUTES AND REGULATIONS INVOLVED . 7

STATEMENT OF THE CASE 8

REASONS FOR GRANTING THE WRIT . . . 17

I. 17

II. 27

III. 29

CONCLUSION 30

APPENDIX

U.S. Court of Appeals Decision . 1a

U.S. District Court Decision . . 27a

Memorandum, U.S. Court of Appeals 36a

U.S. Court of Appeals ORDER . . . 38a

10 U.S.C. §280 . . . . . 39a

10 U.S.C. §1003 . . . . . 41a

BUPERSMAN 1880160 . . . . . 42a

DoD Directive No. 1100.15 . . . . 45a

TABLE OF AUTHORITIES

Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. §621 (et. seq.) . . . 1,2,3,22

BUPERSMAN Article 1880160.1b(1) 7,8,10,13,15,16

Department of Defense
Directive No. 1100.15 of
June 3, 1976 . .7,12,13,14,15,16,18,19

Title VII of the Civil Rights
Act of 1964, as amended (42 U.S.C.
§§2000e-17) 1

10 U.S.C. §280 2,7,11,12,27

10 U.S.C. §1003 7,10,11,16

10 U.S.C. §1004 24

10 U.S.C. §1251 9

10 U.S.C. §1331 9

10 U.S.C. §1334 8

10 U.S.C. §5891 8

10 U.S.C. §6391 9

10 U.S.C. §6410 24

28 U.S.C. §1254(1) 7

Ackerman v. Diamond Shamrock Corp.,
670 F.2d 547 (6th Cir. 1982) 21

Corwin et al v. United States,
724 F.2d 1577, (Fed. Cir. 1984) . . 6

Garner v. Boorstin, 690 F.2d 1034
(DC Cir. 1982) 21

Golomb v. Prudential Ins. Co. of
America, 688 F.2d 547 (7th
Cir. 1982) 21

Harpring v. Continental Oil Co., 628 F.2d 406, 408 (5th Cir. 1980), Cert. den. 454 U.S. 19 21

Hodgson v. First Federal Savings and Loan Assn. of Broward County, 455 F.2d 818 (4th Cir. 1972) 21

Lindemann Maschinenfrabrink Gmbh v. American Hoist and Derrick Co., et al, ___ F.2d _____, ___ USPQ ___ (Fed. Cir. 1984) 28

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) . .19,20,21,22,23,25,26

Moses v. Falstaff Brewing Corp., 550 F.2d 1133 (8th Cir. 1977) 22

Sutton v. Atlantic Richfield Co., 646 F.2d 407 (9th Cir. 1981) 22

Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981) 19,20,21,22,23,25,26

Wilson v. Sealtest Foods Division of Kraftco Corp., 501 F.2d 84 (4th Cir. 1974) 22

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 724 F.2d 1577, (Fed. Cir. 1984). That opinion along with the order denying the Petition for a Rehearing and Suggestion for a

Rehearing En Banc, and the appealed decision of the U.S. District Court for the District of Columbia (Unreported) are in the Appendix.

JURISDICTION

The opinion and judgment of the Court of Appeals were dated and entered January 9, 1984. A timely Petition for Rehearing and a Suggestion for a Rehearing En Banc was denied January 31, 1984. This court has jurisdiction under 28 U.S.C. §1254(1).

STATUTES AND REGULATIONS INVOLVED

The case involves Sections 280 and 1003 in Title 10, U.S. Code (1976), Department of Defense Directive No. 1100.15 of June 3, 1976 and BUPERSMAN Article 1880160.1b(1). Their pertinent texts are set forth in the Appendix.

STATEMENT OF THE CASE

Appellants are officers of the Naval Reserve involuntarily transferred to Standby Reserve-Inactive on October 1 after reaching the maximum age prescribed for their respective grades by BUPERSMAN Article 1880160.1b(1). Naval Reserve officers in the Standby Reserve-Inactive are proscribed by 10 U.S.C. §5891 from being considered for promotion and by 10 U.S.C. §1334 from counting their "service in an inactive status" for retirement purposes.

Lieutenant Oliver is a black who received his initial commission at a more advanced age than usual, a prior pattern of discrimination against commissioning blacks having existed in the Navy. He was involuntarily placed in the Standby Reserve-Inactive after reaching age 46. Because of this, he

did not have a chance to be considered for promotion to lieutenant commander.

Lieutenant Commander Corwin is a Chaplain who was forced into the Standby Reserve-Inactive after reaching age 52.

Captain Shine, a JAG Corps officer, Captain Cotman, a dental officer, and Commander Torgersen, a line officer, were each transferred after reaching age 58.

The only statutory ages prescribed for involuntary retirement of both Reserve and Regular officers is age 62 and, in limited cases, age 64. 10 U.S.C. §§1251, 6391. However, qualified Reserve officers become eligible for voluntary retirement with pay at age 60. 10 U.S.C. §1331.

BUPERSMAN Art. 1880160.1b(1) specifies the following maximum ages in grade for Ready Reserve officers:

Grade	Age
WO/CWO	58
ENS/LTJG	40
LT	46
LCDR	52
CDR/CAPT	58

In contrast, Regular officers do not have regulatory maximum age-in-grade limitations.

The statute which authorized the Secretary of the Navy to prescribe the above maximum ages for Reserve officers is 10 U.S.C. §1003 which provides:

> Officers: Age Limitations
> A reserve officer who has passed the maximum age prescribed for his grade and classification may, as prescribed by the Secretary concerned --

> * * * *
>
> (2) be retained in, or transferred to, an active or inactive status; or
>
> (3) upon his request, be retained in, or transferred to, a retired status.
>
> * * * *

The above authority is, however, subject to standards, policies, and procedures prescribed by the Secretary of Defense under 10 U.S.C. §280 which provides:

Regulations

> Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as he considers necessary to carry out chapters 11, 34, 39, and 59, and sections 715, 1003, 1004, 1376, 2001, 2511, 3077, 3079, 3221, 3224, 3259, 3260, 3261, 3351, 3352, 3354, 3495, 3498,

> 3686, 5251, 5252, 5456, 5597, 6327, 6483, 7225, 7226, 7854, 8077, 8079, 8221, 8224, 8259, 8260, 8261, 8351, 8352, 8354, 8495, 8498 and 8686 of this title. * * * So far as practicable, regulations for all reserve components shall be uniform.

On June 3, 1976, a Department of Defense Directive No. 1100.15 was issued on the subject, "The Department of Defense Equal Opportunity Program." The provisions of the Directive encompassed military personnel, civilian employees, nonappropriated fund employees, applicants for DoD employment and firms under contract to or seeking contracts with the Department of Defense. It establishes as Department of Defense policy to: "Actively oppose arbitrary discrimination based on race, religion, color, sex, age, or national origin." Heads of DoD components, in-

cluding the Secretary of the Navy, were required to "Amend to eliminate, on a continuing basis, arbitrary discrimination based upon race, religion, color, sex, age, or national origin in regulations or practices impeding equal opportunity for all military personnel and civilian employees." The only exception was "statutes requiring differing treatment of military personnel based on age or sex." "Equal Opportunity" was defined as "equal consideration and treatment based on merit, fitness and capability." Insofar as the maximum ages prescribed by BUPERSMAN 1880160.1b(1) were concerned, the above policy and requirements of DoD Directive No. 1100.15 were apparently ignored or considered inapplicable.

Careers of Regular and Reserve officers are governed by up-or-out sys-

tems. Such systems are not based on age, but rather on years of total commissioned service coupled with selection or failure of selection to the next higher grade. The essence of an up-or-out system is that each officer is given a fair opportunity to be promoted within a certain time span. If not promoted, he is involuntarily removed from an active status. In addition, an officer may be involuntarily separated or retired for physical disability or for cause.

To use officers' ages as the sole criteria to remove them from an active status is inconsistent with the up-or-out system and with DoD Directive No. 1100.15 because it denies them the opportunity to be considered for selection to the next higher grade based on their merit, fitness and capability.

Nevertheless, both the U.S. District Court and the Court of Appeals justified Navy actions to place Lieutenant Oliver and Lieutenant Commander Corwin in the Standby Reserve-Inactive as part of the up-or-out system of the Navy. The age 58 actions for the other officers were justified on the grounds that this ensured such officers, if recalled to active duty, would serve at least two years before becoming eligible for retirement with pay at age 60.

The Courts first upheld BUPERSMAN 1880160.1b(1) as a rational exercise of Secretarial authority as if DoD Directive No. 1100.15 did not exist. They recognized there might be better ways for the Navy to accomplish the same results without resorting to age limita-

tions but concluded the regulations should be upheld if rational.

DoD Directive No. 1100.15 which establishes a Department of Defense Equal Opportunity Program, was then distinguished because the policy included the word "arbitrary" and, the Courts having concluded that the age limitations were within the authority of 10 U.S.C. §1003, ipso facto, they could not be arbitrary.

Concerning the requirement that regulations for all reserve components shall be uniform insofar as practicable, neither Court expressed curiosity as to what comparable regulations of other reserve components might disclose. The Court of Appeals held, in effect, that personnel problems which relate to manpower needs, ability to recruit and retain personnel, autho-

rized personnel limits, fiscal situations, and the nature of military duties confronting each service were different and therefore there was no need for uniformity irrespective of what regulations of other reserve components might disclose.

REASONS FOR GRANTING THE WRIT

I.

The case of Lieutenant Oliver exemplifies how adverse racial discrimination can be parlayed into age discrimination. He did not have the opportunity to be commissioned until older than most because of his race and now age is being used against him to preclude continuation of his Reserve career.

This problem was pointed out to the lower courts, albeit there is no reference to Lieutenant Oliver's race

in the decisions. It was also specifically pointed out that in not giving Oliver an opportunity to be selected for promotion, it is possible someone less fitted for promotion was selected in lieu of him. Age discrimination is thus being used contra to the purpose of the Navy's up-or-out system. Its contribution is negative to the concept of an officer corps consisting of the best fitted.

Although Lieutenant Oliver highlights the unfairness of the Navy's maximum age-in-grade regulations, their application in every case is a denial of equal opportunity -- treatment based upon a prohibited consideration, age, not on merit, fitness and capability -- as required in DoD Directive No. 1100.15. Moreover, the U.S. Court of Appeals for the Federal Circuit has, in

effect, told the Navy it can keep right on discriminating and the other Services can do likewise if they wish.

Discrimination based on race, color, religion, sex, age, or national origin is such a discredited concept and equal consideration for all based upon merit, fitness and capability seems so consistent with the best interests of any institution, it is incredible this case should arise at all.

How then can it be explained?

The answer is that the Court of Appeals and the U.S. District Court failed to use the factual approaches prescribed by this Court and applied by other Circuits for discrimination cases. For age discrimination, this is McDonnell Douglas/Burdine analytical framework from McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas

Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

Under the McDonnell Douglas/ Burdine formula a prima facie case of age discrimination is made out if the plaintiff proves (1) he is a member of the protected group; (2) he has been terminated; (3) he has been replaced by a person outside the protected group; and (4) that he was qualified to do the job.

Once a plaintiff has made out a prima facie case of age discrimination, the burden shifts to the employer to establish a bona fide occupational qualification defense and in doing so its burden is (1) to show same is (a) reasonable and (b) necessary to the essence of its business; and (2) defendant has a reasonable cause, that is a factual basis, for believing (a) all or

substantially all persons within the class would be unable to perform safely and efficiently the duties of the job involved or (b) it would be impossible or impractical to deal with persons over the age limit on an individual basis.

The McDonnell Douglas/Burdine rule is followed in age discrimination cases by other Circuits in Garner v. Boorstin, 690 F.2d 1034 (DC Cir. 1982); Hodgson v. First Federal Savings and Loan Assn. of Broward County, 455 F.2d 818 (4th Cir. 1972); Wilson v. Sealtest Foods Division of Kraftco Corp., 501 F.2d 84 (4th Cir. 1974); Harpring v. Continental Oil Co., 628 F.2d 406, 408 (5th Cir. 1980), Cert. den. 454 U.S. 19; Ackerman v. Diamond Shamrock Corp., 670 F.2d 547 (6th Cir. 1982); Golomb v. Prudential Ins. Co. of America, 688

F.2d 547 (7th Cir. 1982); Moses v. Falstaff Brewing Corp., 550 F.2d 1133 (8th Cir. 1977); and Sutton v. Atlantic Richfield Co., 646 F.2d 407 (9th Cir. 1981).

In the instant case, the lower Courts make no pretense that McDonnell Douglas/Burdine was applied. The obvious reason is that the DoD Directive includes the word "arbitrary." But "arbitrary age discrimination" is also proscribed in ADEA (29 U.S.C. §621(b)). Moreover, the same policy and definition of equal opportunity in the DoD Directive apply to military personnel and civilian employees alike. That "arbitrary" in the same rule should have one meaning for civilians and another, much less favorable, for service personnel stands the law on its head.

Under McDonnell Douglas/Burdine Appellants would prevail. They are members of a protected group insofar as they come within the ambit of the Secretary of Defense's Directive; (2) they were "terminated" in that they were removed from an "active" to an "inactive" status in the Naval Reserve; (3) because they could not be considered by selection boards, they have been replaced by younger Reservists who may well not have been as qualified as they are; and (4) they were qualified to do their jobs.

Possible defenses are effectively swept away because the age limitations involved are not applied to Regular Naval officers. If age is a bona fide reason to eliminate Reservists from the active status, the same must be true in spades for Regulars. That age

limitations are not applied to Regular officers negates any factual basis to believe primarily all of those in Appellants' classifications would inherently be unable to perform their duties because of their ages. Nor has the government suggested it is impractical or impossible to consider the cases of Reservists over the age limits on individualized bases. In this connection, continuation boards for Reserve officers are authorized by 10 U.S.C. §6410 specifically to "provide a steady flow of promotion for officers in an active status in the Naval Reserve" wherein "age" is not a factor. Moreover ample authority exists under 10 U.S.C. §1004 for the Navy to transfer Reserve officers not physically qualified to a retired status.

Clearly the Navy has sufficient statutory means to ensure it retains only Reservists having the best merit, fitness and capability (as required by the DoD Directive) irrespective of their ages through its normal up-or-out selection board processes, by continuation boards applying such criteria, and finally by reason of physical disqualification.

Under the McDonnell Douglas/ Burdine analysis, the nonapplicability of the lower Courts' rationale for the Navy's age limitations becomes apparent. For example, Lieutenant Oliver, because he reached age 46, was denied opportunity to be considered for selection to the grade of lieutenant commander. It is probable, and certainly possible, he was replaced by an officer of less merit, fitness and capabi-

lity in direct contravention of the Secretary of Defense's Directive requiring enforcement of "equal opportunity".

If the Court of Appeals of the Federal Circuit and the U.S. District Court had utilized the factual framework prescribed by this Court and followed in other circuits to determine if arbitrary age discrimination exists, then the government, under the McDonnell Douglas/Burdine analytical formula, would have had little alternative but to admit same.

In not doing so, about one million Reserve and Guard and two million active duty men and women of the Armed Forces have been placed in a second class status insofar as their rights against discrimination based on race, color, religion, sex, age, or national origin, are concerned.

Those such as Lieutenant Oliver who were commissioned at more advanced ages than normal because of a pattern of previous racial discrimination have been twice wronged through no fault of their own, unnecessarily and irrespective of their individual merit, fitness and capability.

II.

For maximum ages in grades, the Court of Appeals for the Federal Circuit has effectively judicially repealed the last sentence of 10 U.S.C. §280 that certain regulations prescribed for Reserve components in the Armed Services are to be uniform insofar as practicable. This goes far beyond the proper bounds of judicial discretion. Moreover, it again condones a different and less demanding standard of judicial review of actions

adverse to service personnel. To this extent, it informs those who serve or have served in the Armed Forces that in the realm of judicial review they are second class citizens.

It is instructive to compare the Court of Appeals' decision on patents in Lindemann Maschinenfrabrink Gmbh v. American Hoist and Derrick Co., et al, ___ F.2d _____, ___ USPQ ___ (Fed. Cir. 1984), where it observed on page 11 of the slip opinion dated March 21, 1984:

> "Courts are not, of course, at liberty to repeal a statute, or to legislate conditions diminishing its effect."

But this is exactly what it did in the instant case. For the Court of Appeals to observe this rule for statutorily conferred patent rights, but not for statutorily conferred people rights is fundamentally wrong.

III.

The Court of Appeals' and District Court's decisions constitute such a radical departure from well-established precedents of other circuits, and in the process have so eroded important rights of service personnel to be free from arbitrary age discrimination that review by this Court is appropriate and necessary.

CONCLUSION

For the reasons stated, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

By: _____
Penrose Lucas Albright
2306 South Eads Street
Arlington, VA 22202
(703) 979-3242
Attorney for Petitioners

MASON, MASON & ALBRIGHT
Of counsel

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CHARLES M. CORWIN, ET AL.,

Appellants,

v. Appeal No. 83-925

JOHN F. LEHMAN, JR.,
SECRETARY OF THE NAVY, ET AL

Appellees.

DECIDED: January 9, 1984

Before MARKEY, Chief Judge, and FRIEDMAN and RICH, Circuit Judges.

FRIEDMAN, Circuit Judge

This appeal challenges a regulation of the Secretary of the Navy pursuant to which the appellants, Naval Reserve officers, were involuntarily transferred from the Ready Reserve to the Standby Reserve because they had

reached the maximum age for officers of their grade. We uphold the regulation and therefore affirm the district court's dismissal of the complaint.

I

Under a regulation of the Department of the Navy, Reserve officers who reach a specified age in a specified grade are to be transferred from the Ready Reserve to the Standby Reserve. Bureau of Naval Personnel Manual, art. 1880160.1b(1) (1978). The maximum age in grade ranges from 40 for Ensigns and Lieutenants junior grade to 58 for Commanders, Captains and Warrant Officers. Id. The results of such a transfer to the Standby Reserve are that the transferred officers will not be eligible to be considered for promotion or to receive pay, allowances, or retire-

ment point credit for participation in Naval Reserve activities. 10 U.S.C. §§1334, 5891 (1982).

Each of the five appellant Reserve officers was involuntarily transferred from the Ready to Standby Reserve on October 1 in the next fiscal year following the year in which he reached his maximum age in grade. At the time of such transfers, three of the appellants (two Captains and one Commander) were 58, one of them (a Lieutenant Commander) was 52, and one (a Lieutenant) was 46. One of the transfers took place in 1978, three in 1979, and one in 1980.

In March 1982 the appellants filed a complaint in the United States District Court for the District of Columbia, seeking (1) a declaratory

judgment that their transfers to the Standby Reserve were illegal and void, (2) injunctive relief, including restoration to the positions they would have had if they had not been transferred, and (3) damages. They invoked the jurisdiction of the district court under a number of statutes, including 28 U.S.C. §1346 (1976).

The complaint alleged that, as applied to the appellants, the age-in-grade regulation violated 10 U.S.C. §280 (1982) because it was inconsistent with standards and policies of the Secretary of Defense prohibiting age discrimination and because it violated the statutory requirement that the regulations for all Reserve components should be uniform as far as practicable. The appellants sought to prosecute the

suit as a class action on behalf of all Naval Reserve officers who had been involuntarily transferred to the Stand-by Reserve pursuant to the age-in-grade requirements. (The district court did not decide the request for class action certification.) The appellants also alleged that their transfer violated "the purpose of" the Age Discrimination in Employment Act. 29 U.S.C. §§621-634 (Supp. V 1981).

The government moved to dismiss for lack of jurisdiction and the appellants' failure to exhaust administrative remedies. The district court treated the motion as one for summary judgment and granted it upon other grounds. The court held that the age-in-grade requirements were "rationally related to the Navy's paramount inter-

est in maintaining a reserve force of optimum capability" and did not violate the requirement in section 280 that Reserve regulations be uniform among the services "[s]o far as practicable" because there was no "demonstrable abuse of discretion by the Navy in departing from regulations in force in its sister services" containing different age-in-grade standards.

The appellants appealed to the Court of Appeals for the District of Columbia Circuit. On the government's motion (to which the appellants did not object), that court transferred the case to this court pursuant to 28 U.S.C.A. §1631 (Supp. 1983). It ruled that under the Federal Courts Improvement Act of 1982, we have exclusive jurisdiction over the appeal because

the district court's jurisdiction was based "in whole or in part" on 28 U.S.C. §1346(a)(2). 28 U.S.C.A. §1295(a)(2) (Supp. 1983). Both parties agree that we have jurisdiction over the appeal, and our independent examination of the issue confirms that conclusion.

II

The government makes two preliminary challenges to the district court's entertainment of this case.

First, it argues that the Age Discrimination in Employment Act, which was one of the bases upon which the appellants invoked the jurisdiction of the court, does not apply to naval reservists. As we understand the appellants' argument, however, it is not that the Navy's age-in-grade limits

actually violate that Act, but rather that they violate the spirit and policy of the Act. In any event, the other jurisdictional grounds upon which the appellants relied were sufficient.

Second, the government contends that the appellants had not exhausted their administrative remedies by presenting their claims to the Navy's Board for the Correction of Military Records. Since we have concluded that the district court correctly dismissed the appellants' suit, we pretermit this thorny question and proceed directly to the merits.

III

A. The authority of the Secretary of the Navy to establish the age-in-grade standards and provisions here challenged is set forth in 10 U.S.C.

§§1003, 280 (1982). Section 1003 provides in pertinent part:

> A reserve officer who has passed the maximum age prescribed for his grade and classification may, as prescribed by the Secretary concerned--
>
> . . . . .
>
> (2) be retained in, or transferred to, an active or inactive status; . . . .

Section 280 provides that "[s]ubject to standards, policies and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as he considers necessary to carry out" specified chapters and sections of title 10, including section 1003. Section 280 further states that, "[s]o far as practicable, regulations for all reserve components shall be uniform."

These two sections together give the Secretary of the Navy broad discretion to set age in grade limitations for Reserve officers and to determine the treatment of Reserve officers who do not meet those standards (subject to the uniformity requirement, discussed below). Congress contemplated and intended that the Secretaries of the different services would prescribe age limitations for Reserve officers of different grades and decide whether officers who did not meet those standards would "be retained in, or transferred to, an active or inactive status." 10 U.S.C. §1003(2) (1982).

The age in grade requirements here challenged constitute a reasonable and proper implementation by the Secretary of the Navy of his statutory au-

thority and responsibility. As the district court correctly pointed out, the transfer of 58-year-old Reserve officers

> to inactive status is necessary to assure the integrity of its reserve during times of national emergency. Although the Secretary may call any reservist to active duty for 24 months during a military emergency, 10 U.S.C. §673 (1976), each reservist has an unqualified right to retire at age 60. 10 U.S.C., §§676, 1331 (1976). The regulation thus ensures that any reservist so activated will not evade completion of an emergency call-up by premature retirement...this portion of the regulation is justified by military necessity.

The appellants do not deny that this was a proper basis for the Secretary to act upon in setting age-in-grade limits. They argue, however, that the Secretary could have accomplished this objective in other ways that would have had a less severe im-

pact upon 58-year-old officers. They suggest that the Secretary could have required 58-year-old reservists to agree, as a condition for continuing in the Ready Reserve, that if called to active duty they would remain in that status as long as the Navy required their services, even past age 60.

It is not for a court to speculate whether the Secretary would have been better advised to have selected some other method for achieving his valid purpose or to second guess his judgment and decision. As the district court correctly pointed out, the federal courts "have a very limited role in reviewing military personnel decisions, Orloff v. Willoughby, 345 U.S. 83 (1953); Dilley v. Alexander, 603 F.2d 914, 920 (D.C. Cir. 1979)." We

cannot say that the Secretary abused his discretion or otherwise acted improperly in providing for transfer to the Standby Reserve of those Naval Reserve officers in the grades of Commander and Captain who had passed their 58th birthdays.

The district court also correctly upheld the age-in-grade requirements for younger officers as an appropriate provision "to create opportunities for promotion within the reserve hierarchy." As the court pointed out, the Supreme Court upheld a comparable system for mandatory retirement of Foreign Service officers at age 60, which had a similar purpose. Vance v. Bradley, 440 U.S. 93 (1979). Although the appellants seek to distinguish that case on the ground that it involves statutory rather than

regulatory requirements, that distinction is immaterial and does not weaken the significance of the decision as sanctioning mandatory release from active service of older employees in order to make way for younger ones. That Congress found such a policy reasonable for the Foreign Service in no way undermines the Secretary's conclusion that the policy also is appropriate for the Reserve.

The reasonableness of the Navy's age-in-grade requirement is further supported by the fact that the ages the Secretary prescribed were the identical ages Congress itself had provided in earlier legislation. Prior to 1952, Congress specified the ages at which the Secretary of the Navy could discharge or retire Reserve officers. 34

U.S.C. §855g (1946) (did not cover Captains). The Secretary of the Navy did not act unreasonably or arbitrarily in selecting the same retirement ages that Congress itself previously had specified.

As is the case with the 58-year-old officers, under the limited scope of our review of military personnel actions we have no basis for rejecting the age-in-grade requirements the Secretary has provided for younger, more junior naval reservists.

B. Our holding in part IIA disposes of the appellants' contention that the application of the age-in-grade requirements violated the policy and directives of the Secretary of Defense prohibiting age discrimination in the Armed Forces. Department of

Defense Directive No. 1100.15 (June 3, 1976). As the appellants recognize, these instructions are directed against and prohibit only "arbitrary" age discrimination. Since we have upheld the Navy's age-in-grade requirements as a reasonable implementation by the Secretary of the Navy of his authority under 10 U.S.C. §§1003(a) and 280, any age discrimination inherent in those requirements necessarily is not arbitrary.

C. Appellants argue that, because the other services have different involuntary retirement ages for officers of the same level, the Navy's age-in-grade requirements violate the provision in 10 U.S.C. §280 that "[s]o far as practicable, regulations for all reserve components shall be uniform."

The government states that Reserve officers in the Army and the Air Force are not involuntarily transferred to the Standby Reserve until age 60. See 10 U.S.C. §§3843, 8843 (1982) (Army and Air Force, respectively).

As the district court correctly pointed out, however, this provision "does not mandate complete uniformity among reserve regulations," but only requires uniformity "[s]o far as practicable." We conclude that in this language Congress did not require absolute uniformity among the services, but gave each service discretion to tailor its own age-in-grade standards to meet its particular requirements and problems.

Although the legislative history of this provision is subject to varying interpretations, on balance it warrants

our conclusion. The provision originated in the Armed Forces Reserve Act of 1952, ch. 608, 66 Stat. 481. That Act included a comprehensive revision of the many statutes and provisions that had governed the Reserve components of the Armed Forces. 98 Cong. Rec. 8305 (1952) (statement of Senator Long).

One of the stated purposes of the Act was "to place all the reserve components of the United States Armed Forces on an equal basis." H.R. Rep. No. 1066, 82d Cong., 1st Sess. 1 (1951). In its general discussion of the legislation, the House committee again stated that the bill "places the reserve components of all the Armed Forces on an equal footing" and that "the committee has sought to provide

for equality of treatment for all reservists." Id. at 24. The committee, however, recognized that

> [t]he bill does not achieve complete equality in all respects and has avoided changes merely to achieve similarity unless a good result is achieved thereby. There now exist many differences between the reserve components with respect to promotion, attrition, constructive credit, precedence, hospitalization, death and disability benefits, and other benefits. The committee is unhappy that the bill does not go all the way toward providing equality of treatment in all of these areas, and was prepared to write each equalizing provisions into the proposed legislation. However, the committee became convinced that the drafting of such provisions on a uniform basis will require a great deal of study and much time.

Id.

In its section-by-section analysis of the bill, the committee stated that section 232 (the predecessor to section 1003)

> provides that any Reserve officer whose age exceeds that prescribed for his grade and classification may be transferred to a status for which he is qualified. It is to be noted that the bill does not fix any maximum age for membership in the reserve components or for any grade, but the committee has required the Department of Defense to consider the subject of maximum ages in its study of promotion since maximum age in grade is an integral part of a promotion system by being a means of attrition.

Id. at 42. The latter reference was to a provision in the bill requiring that

> the Secretary of Defense submit two bills to the Congress by February 1, 1952. One such bill is to contain a uniform system of promotion for reservists, including provisions for precedence, forced attrition, distribution in grades, and constructive credit. The second bill is to provide for the equalization of benefits among all reservists and between reservists and regulars.

Id. at 24-25.

The Senate committee report on the bill stated that the provision

governing age limitations (section 226 in the Senate bill) "provides that any Reserve officer whose age exceeds that prescribed for his grade and classification may be separated, or transferred to a status for which he is qualified. The bill does not fix any maximum age for membership in the reserve components or for any grade." S. Rep. No. 1795, 82d Cong., 2d Sess. 24, reprinted in 1952 U.S. Code Cong. & Ad. News 2005, 2030. The report then summarized the various statutory provisions governing the retirement ages in the different Reserve components, including the authority of the Secretary of the Navy to discharge or place on the honorary retired list Naval Reserve officers who had reached specified ages. See 34 U.S.C. §855g

(1946). The committee described section 246 of the Senate bill (which became codified as section 280) as follows:

> This section vests each Secretary with power to make and publish regulations for the reserve components under his jurisdiction. The regulations of the military departments would be subject to standards, policies, and procedures which the Secretary of Defense may prescribe and would be uniform insofar as practicable for all the reserve components.

S. Rep. No. 1795, supra, at 34-35, 1952 U.S. Code Cong. & Ad. News at 2041. The conference committee report does not deal with this issue. H.R. Rep. No. 2445, 82d Cong., 2d Sess. (1952).

This legislative history indicates that Congress wished to provide equality of treatment among the different Reserve components with respect to a wide variety of subjects, but that it

also recognized that the bill it enacted could not and did not provide complete uniformity. Necessarily, the Act gave the respective service Secretaries substantial discretion to determine the extent to which the needs and situations of the particular service justified departure from the general standard of uniformity that Congress desired for the various Reserve components. The requirement in section 280 that regulations for all Reserve components should be uniform "[s]o far as practicable" is a general provision dealing with all aspects of Reserve affairs. It is not specifically directed to the particular problem of age-in-grade limitations that section 1003 addresses.

We do not believe that in section 280 Congress intended to preclude the Secretary of the Navy from continuing by regulation the same age-in-grade limits that Congress previously had prescribed by statute. Reading sections 280 and 1003 together, we think they authorize but do not require the Secretary of the Navy to change the previous age-in-grade limits. Similarly, we do not think that section 280 requires the Secretary, as a condition to continuing the prior age limitations, affirmatively to demonstrate that it would not be practicable for the Navy to follow the same age-in-grade standards as the other services.

We cannot say that the Secretary of the Navy acted arbitrarily or capri-

ciously or in violation of section 280 in adopting for the Naval Reserve age-in-grade limits different from those of the other services. The personnel problems that confront the different services are different. The differences relate to manpower needs, ability to recruit and retain personnel, authorized personnel limits, fiscal situations, and the differing nature of the military duties of the services. These differences necessarily influence the different services' needs for Reserve as well as Regular officers.

In the circumstances, the district court was warranted in upholding the Navy age-in-grade standards against the appellants' uniformity challenge without considering the details of the variations between the Navy's standards

and those of the other services. There was, therefore, no need for the court to have before it the standards of the other services when it decided this case.

The order of the district court granting the appellees' motion for summary judgment is affirmed.

AFFIRMED.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHARLES M. CORWIN, et al.,

Plaintiffs,

v. Civil Action No. 82-0726

JOHN F. LEHMAN, JR., et al

Defendants.

MEMORANDUM AND ORDER

This is an action by five U.S. Naval Reserve officers against defendants John Lehman, Secretary of the Navy; Lando Zech, Deputy Chief of Naval Operations; and the United States of America (collectively the "Navy"), challenging their involuntary transfer from the Navy's ready reserve to the standby reserve-inactive after reaching a maximum age-in-grade prescribed by Bureau of Naval Personnel Manual, arti-

cle 1880160.16(1).[1] The complaint alleges that the regulation conflicts with a Department of Defense policy directive disapproving arbitrary age discrimination in the armed forces; violates 10 U.S.C., §280, which requires regulations for all military reserves to be uniform "insofar as practicable;" and is invalid as having been promulgated by an officer without

[1]The regulation establishes the following age limitations:

Warrant Officer, Commissioned Warrant Officer	58
Ensign, Lieutenant (junior grade)	40
Lieutenant	46
Lieutenant Commander	52
Commander, Captain	58

Plaintiffs Shine, Cotman, and Tergersen were transferred in the year each reached age 58, while plaintiffs Corwin and Oliver were transferred after reaching ages 54 and 46, respectively. As a result, each lost certain promotion opportunities and retirement benefits.

authority to do so.[2] Plaintiffs (who sought, but have not been certified, to represent a class of reserve officers similarly situated) request, inter alia, a declaratory judgment, back pay, and reinstatement. The case is now before the Court on defendants' motion for summary judgment.

Plaintiffs claim that article 1880160.1b(1) constitutes de facto age discrimination in violation of the Defense Department's stated policy to

[2]The complaint also claims that the regulation violated the Age Discrimination in Employment Act, 29 U.S.C., §633a, but in their opposition to the Navy's motion and at oral argument plaintiffs conceded that the ADEA does not apply to uniformed members of the armed forces. Simpson v. United States, 467 F.Supp. 1122 (S.D. N.Y. 1979); Lear v. Schlessinger, No. 75-205 (W.D. Mo. April 14, 1978). In addition, plaintiffs' counsel expressly acknowledged that plaintiffs were not challenging the regulation on constitutional grounds.

oppose such discrimination.[3] The federal courts, however, have a very limited role in reviewing military personnel decisions, Orloff v. Willoughby, 345 U.S. 83 (1953); Dilley v. Alexander, 603 F.2d 914, 920 (D.C. Cir. 1979), and even assuming the Court has jurisdiction to referee a conflict between a Navy personnel regulation and a Department of Defense policy statement,[4] the former must be upheld if rationally related to the Navy's paramount interest in maintaining a reserve force of optimum capability. Simpson v. United States, 467 F.Supp.

[3]Department of Defense Directive No. 1100.15 (June 3, 1976), states that the military will "actively oppose arbitrary discrimination based on...age." (emphasis added) The directive does not require all regulations to be age neutral, but only that any disparate impact be rationally motivated.

[4]See Harmon v. Brucker, 355 U.S. 379 (1958); Mindes v. Seaman, 453 F.2d 197 (5th Cir. 1971).

1122 (S.D. N.Y. 1979). See Rostker v. Goldberg, 453 U.S. 57 (1981).

The Navy claims that transfer of reserve officers at age 58 to inactive status is necessary to assure the integrity of its reserve during times of national emergency. Although the Secretary may call any reservist to active duty for 24 months during a military emergency, 10 U.S.C., §673 (1976), each reservist has an unqualified right to retire at age 60. 10 U.S.C., §§676, 1331 (1976). The regulation thus ensures that any reservist so activated will not evade completion of an emergency call-up by premature retirement, and the Court concludes that this portion of the regulation is justified by military necessity.

As to attritive provisions of article 1880160.1b(1) applicable to

younger officers, the Navy asserts that they were designed to create opportunities for promotion within the reserve's hierarchy. In Vance v. Bradley, 440 U.S. 93 (1977) the Supreme Court held that providing for advancement among Foreign Service officers through a mandatory retirement age was a permissible means of fostering "superior achievement" in the ranks notwithstanding its adverse impact upon older officers in the Service, and for the same reasons in Simpson v. United States, 467 F.Supp. 1122 (S.D. N.Y. 1979) the court upheld an attrition scheme for National Guard reservists similar to the one at issue here. See also Massachusetts Board of Retirement v. Murgia, 427 U.S. 367 (1976). By its express terms, 10 U.S.C., §280, does not mandate complete uniformity among reserve regulations;

it requires only that they be uniform insofar as practicable. This statutory language suggests that Congress did not intend to constrain the Navy's discretion to take independent action to any appreciable extent, and the Act's legislative history fully supports this construction. The section first appeared in the Armed Forces Reserve Act of 1952. The accompanying House Report notes that while the bill attempted to provide equality among reservists, it did not "achieve complete equality in all respects and has avoided changes merely to achieve similar results unless a good result is achieved thereby." H.Rep. No. 1066, 82nd Cong., 2d Sess. (1951). Moreover, plaintiffs have not suggested what utility uniform age-in-grade regulations would serve (save to postpone their own inevitable trans-

fers) and absent any demonstrable abuse of discretion by the Navy in departing from regulations in force in its sister services, the Court cannot impose uniformity simply for its own sake. See United States v. Simpson, 427 F.Supp. 1122 (S.D. N.Y. 1979)

Plaintiffs' final claim is that pursuant to 10 U.S.C., §1003, only the Secretary of the Navy may promulgate maximum age-in-grade regulations, and article 1880160.1b(1) must therefore be invalid because it was issued by the Chief of Naval Operations. The authority to screen the ready reserve, however, was broadly delegated through the proper chain of command (SECNAVINST 1001.10 E (Oct. 17, 1979)) and without any evidence that Congress intended to limit the Secretary's power to subdelegate (of which there is none presented

by this record), this grant of power is sufficient to validate the regulation. See United States v. Gordon, 580 F.2d 827 (5th Cir.), cert. denied, 439 U.S. 1051 (1978); United States v. McDonald Chevrolet & Oldsmobile, 514 F.Supp. 83 (N.D. Ga. 1981).

Therefore, it is this 15th day of November, 1982,

ORDERED, that the motions of defendants' Lehman, Zech, and the United States for summary judgment is granted.

Thomas Penfield Jackson
U.S. District Judge

UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT
717 Madison Place, N.W.
Washington, D. C. 20439

January 9, 1984

Penrose Lucas Albright
Mason, Mason & Albright
2306 South Eads Street
P. O. Box 2246
Arlington, VA 22202

Mr. David M. Cohen, Director
Commercial Litigation Branch
Civil Division, Todd Bldg.
Department of Justice
Washington, D.C. 20530

MEMORANDUM

Re: Appeal No. 83-925
Charles M. Corwin, et al. vs.
John F. Lehman, Jr., etc., et al.

The Court today announced its decision in the above-entitled appeal.

A copy of the Court's opinion is enclosed, and a judgment in conformity with the opinion has been entered today as required by Rule 36, Federal Rules of Appellate Procedure.

Costs may be recovered (by Appellant or Appellee) as provided by

Rule 39, Federal Rules of Appellate Procedure.

Very truly yours,

-s-

George E. Hutchinson, Clerk

UNITED STATES COURT OF APPEAL FOR THE FEDERAL CIRCUIT

Charles M. Corwin et al,

Appellants

v. No. 83-925

John F. Lehman, Jr.,
Secretary of the Navy,
et al,

Appellees

ORDER

A petition for rehearing and a suggestion for rehearing en banc having been filed in this case,

UPON CONSIDERATION THEREOF, it is Ordered by the court that the petition for rehearing be, and the same is hereby, Denied.

The suggestion for rehearing en banc is declined.

FOR THE COURT

George E. Hutchinson
Clerk

January 31, 1984
Date

10 U.S.C. §280. Regulations

Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as he considers necessary to carry out chapters 11, 34, 39, and 59, and sections 715, 1003, 1004, 1376, 2001, 2511, 3077, 3079, 3221, 3224, 3259, 3260, 3261, 3351, 3352, 3354, 3495, 3498, 3686, 5251, 5252, 5456, 5597, 6327, 6483, 7225, 7226, 7854, 8077, 8079, 8221, 8224, 8259, 8260, 8261, 8351, 8352, 8354, 8495, 8498 and 8686 of this title. The Secretary of Transportation, with the concurrence of the Secretary of the Navy shall prescribe such regulations as he considers necessary to carry out chapters 11, 34, 39, and 59, and sections 715, 1003, 1004, 1376, 2001, and 2511 of this

title, so far as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy. So far as practicable, regulations for all reserve components shall be uniform. As amended Aug. 17, 1977, Pub.L. 95-105, Title V §509(d)(3), 91 Stat. 860; Dec. 12, 1980, Pub.L. 96-513, Title V §§501(5), 511(10), 94 Stat. 2907, 2920.

10 U.S.C. §1003. Officers: age limitations

A reserve officer who has passed the maximum age prescribed for his grade and classification may, as prescribed by the Secretary concerned --

(1) be separated from the armed force concerned;

(2) be retained in, or transferred to, an active or inactive status; or

(3) upon his request, be retained in, or transferred to, a retired status.

However, no officer of the Army National Guard of the United States or the Air National Guard of the United States may be retained or transferred under this section without the consent of the governor or other appropriate authority of the jurisdiction concerned.

Aug. 10, 1956, c. 1041, 70A Stat. 79.

BUPERSMAN 1880160 MEMBERSHIP AND ELIGIBILITY REQUIREMENTS FOR RESERVE CATEGORIES

1. All members of the Naval Reserve are assigned to the Ready Reserve upon original appointment/enlistment and remain members of that category until their transfer therefrom or discharge is effected. Naval Reserve members upon being released from active duty, other than temporary active duty or active duty for training, are members of the Ready Reserve and remain members of that category until their transfer therefrom or discharge is effected, unless the orders to active duty or release from active duty specify otherwise. Members, upon completing their statutory military obligation, may voluntarily elect to remain members of the Ready Reserve by executing a

Ready Reserve Transfer Request/Service Agreement, NAVPERS 1200/1.

* * * *

b. Ready reservists who are eligible may receive pay for their participation in the Naval Reserve when performed under orders providing pay for such duty. Members must meet the following qualifications for retention in, or transfer to, the Ready Reserve:

1. An officer's age shall not exceed the maximum age in grade indicated below. For this purpose, officers will be considered as serving in the grade to which selected unless they have failed to qualify for and/or accept the appointment to such grade within the time limits prescribed by directives. Upon reaching the maximum age in grade, Naval Reserve officers shall be screened from the Ready

Reserve and transferred to the Standby Reserve-Active, if eligible, or to the Standby Reserve-Inactive; or, if eligible and upon request, transferred to the Retired Reserve.

Grade - Age

WO/CWO - 58

ENS/LTJG - 40

LT - 46

LCDR - 52

CDR/CAPT - 58

June 3, 1976

NUMBER 1100.15

DEPARTMENT OF DEFENSE DIRECTIVE

SUBJECT: The Department of Defense Equal Opportunity Program

Refs: (a) DoD Directive 1100.15 "Equal Opportunity Within the Department of Defense," December 14, 1970 (hereby cancelled).

(b) Executive Order 11246, "Equal Employment Opportunity," September 24, 1965 (3 CFR 1964-1965, Comp., p. 339), as amended by Executive Order 11375 of October 13, 1967 (3 CFR 1966-1970) Comp., p. 684) and Executive Order 11478 of August 8, 1969 (3 CFR 1966-1970 Comp., p. 803)

(c) Civil Service Commission Federal Personnel Manual, Chapter 713

(d) Public Law 92-261, "Equal Employment Opportunity Act of 1972"

(e) Department of Labor Rules and Regulations, dated May 28, 1968 (41 CFR 60)

(f) DoD Directive 1100.11, "Equal Employment Opportunity, Government Contracts, "August 9, 1968"

(g) Public Law 93-259, "Amendment to the Age Discrimination in Employment Act 1967"

(h) DoD Directive 5410.18, "Community Relations," July 3, 1974

(i) DoD Instruction 1100.16, "Equal Opportunity in Off-

Base Housing," February 28, 1973

(j) DoD Directive 5120.27, "Assistant Secretary of Defense (Manpower and Reserve Affairs)," December 7, 1973

(k) DoD Directive 1322.11, "Department of Defense Education in Race Relations for Armed Forces Personnel," August 6, 1973

(l) Armed Services Procurement Regulation - Current Edition

(m) Joint Regulation - AR 190-24, MCO 1620.2, AFR 125-11, COMDTINST 1620.1A, January 11, 1972

(n) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e - 2000e-17).

I. REISSUANCE AND PURPOSE

This Directive reissues a reference (a) to (a) outline the Department of Defense Equal Opportunity Program; (b) expand and update the Civilian Equal Employment Opportunity policies which implement references (b) and (c); (c) assign additional responsibilities to comply with the provisions set forth in references (d) and (e); and (d) assign responsibility for assuring DoD-wide compliance with equal employment opportunity goals. Reference (a) is hereby superseded and cancelled.

II. APPLICABILITY AND SCOPE

A. The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies,

and the Unified Commands (hereinafter referred to collectively as "DoD Components").

B. Its provisions encompass military personnel, civilian employees, nonappropriated fund employees, applicants for DoD employment and personnel of firms under contract to or seeking contracts with the Department of Defense (DoD Directive 1100.11, reference (f)). However, this Directive does not apply the provisions of either the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 630-634) (Reference (g)) or Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e - 2000e - 17) (reference (n)) to military personnel.

III. DEFINITION OF TERMS

A. Equal Opportunity. Equal Opportunity as used in this Directive means equal consideration and treatment based upon merit, fitness and capability.

B. Department of Defense Equal Opportunity Program (DoD-EOP). The DoD wide program of equal opportunity that is accomplished through the military equal opportunity and civilian equal opportunity efforts by DoD Components.

C. Military Equal Opportunity Program (MEOP). Efforts by each uniformed member is assured an equal opportunity in the pursuit of the military profession.

D. Civilian Equal Opportunity Program (CEO). Activities to promote Equal Employment Opportunity for DoD civilian employees, as well as those

employed by applicable Federal contractors.

E. Affirmative Action Plans (AAP's). Comprehensive public documents which require quantified good faith goals and timetables of all DoD Components in order to achieve equal opportunity for DoD personnel.

IV. POLICY

It is the policy of the Department of Defense to:

A. Actively oppose arbitrary discrimination based on race, color, religion, sex, age, or national origin.

B. Require all DoD Components to enforce the equal opportunity provisions of this Directive in the development of their operating policies and programs, at all levels of activity.

* * * *

V. RESPONSIBILITIES

* * * *

B. Heads of DoD Components shall be responsible for equal opportunity within their respective jurisdictions and shall:

1. Assure that all equal opportunity policies and programs are understood and executed at all levels of organization.

* * * *

9. Amend to eliminate, on a continuing basis, arbitrary discrimination based upon race, religion, color, sex, age, or national origin in regulations or practices impeding equal opportunity for all military personnel and civilian employees. This requirement does not apply to those service regulations which implement statutes requir-

ing differing treatment of military personnel based on age or sex.

* * * *

VII. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective 90 days after issuance. Two copies of implementing instructions shall be forwarded to the Assistant Secretary of Defense (Manpower and Reserve Affairs) within 180 days of the effective date.

-s-

Secretary of Defense

END OF DOCKET